

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:96-CR-39-BR  
No. 5:08-CV-302-BR

ASHANN-RA a/k/a/ CHRISTOPHER )  
DOZIER, )  
Petitioner, )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
Respondent. )

ORDER

This matter is before the court on the 9 September 2009 Memorandum and Recommendation of Magistrate Judge James E. Gates, regarding the government's motion to dismiss. The government filed objections to the M&R. The court has conducted a *de novo* review.

It appears that the government's contentions are more appropriate for consideration on a motion for summary judgment, rather than on a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). As Judge Gates correctly recognizes, "[i]n analyzing a Rule 12(b)(6) motion, a court must accept as true all well-pleaded allegations of the challenged complaint and view those allegations in the light most favorable to the plaintiff." (M&R at 5 (citations omitted).) At this stage, petitioner is not required to submit evidence, medical or otherwise, in support of his habeas corpus claim.

The court ADOPTS the M&R as its own, and for the reasons stated therein, the government's motion to dismiss is DENIED. The government is DIRECTED to file an answer to the § 2255 motion in accordance with Rule 5 of the Rules Governing § 2255 proceedings within 10 days after

entry of this order. The deadline for filing any motion for summary judgment is 30 days after entry of this order. The court notes that if the government chooses to file such a motion, it would be appropriate for the government to also file, with an accompanying motion to seal, petitioner's presentence report and any psychological reports and/or evaluations relating to petitioner in its possession.

This 26 October 2009.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt  
Senior U.S. District Judge